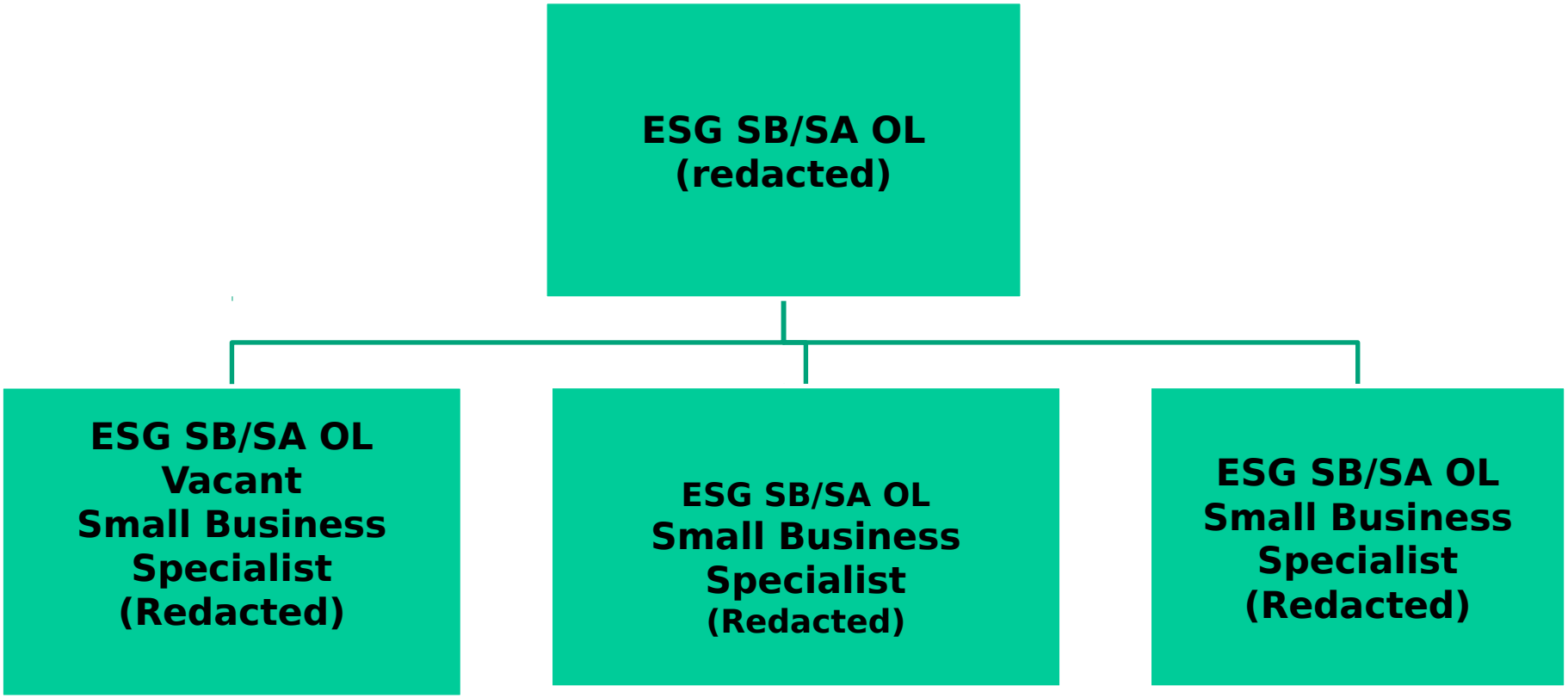
ESG/SB SA OL

Enterprise Sourcing Group
Small Business Office
San Antonio Operating Location
1 May 2012

ESG/SB San Antonio OL



Organizational email
esg.sbsa@us.af.mil

ESG/SB SA OL

- Internal Customers
  - ✓ ESG
  - ✓ 770 Business Support Squadron Operating Location,
  - ✓ 772 Enterprise Sourcing Squadron (ESS)
  - ✓ Air Force Center for Engineering and the Environment (AFCEE)
  - ✓ Air Force Civil Engineer Support Agency (AFCESA)
  - ✓ 773 ESS
  - ✓ Air Force Medical Operations Agency (AFMOA)
  - ✓ Air Force Medical Support Agency (AFMSA)
  - ✓ Air Force Force Protection Commodity Council
  - ✓ Air Force Security Forces
- External Customers
  - ✓ Small and large businesses nationwide
  - ✓ Small Business Administration
  - ✓ DOD/AF/MAJCOM small business and acquisition leadership

Role of the Small Business Office

- Director's advocate and representative for Small Business Program
  - ✓ Facilitate small business participation
    - ✓ Review and make recommendations for all acquisitions over $10,000
  - ✓ Work to create small business strategies while accomplishing the mission
  - ✓ Strive to ensure acquisition community views interactions with small businesses as more than merely a means to achieve numerical goals

- Every Air Force base has a small business specialist
  - ✓ airforcesmallbiz.org
    - ✓ Locate a small business specialist

Role of the Small Business Office (cont'd)

- Part of the Acquisition Team
  - ✓ Review acquisitions, make set-aside recommendations, and help identify sources
  - ✓ Attend program reviews/acquisition strategy panels/ Multi-functional Integrated Review Teams/participate in source selections
    - ✓ Technical team evaluator and advisor to SSA
  - ✓ Publicize small business programs
  - ✓ Assist acquisition teams with market research
- Counsel Small Business Contractors
  - ✓ Advise what the customer's needs are
  - ✓ Coordinate inquiries/guidance requests
  - ✓ Advise how to "get in the game"

Role of the Small Business Office (cont'd)

- Counsel Large Business Contractors
  - ✓ Ensure understanding of subcontracting program
- Focal Point for SAF/SB on environmental matters
- Review AFCEE contract toolbox utilization
  - ✓ Advisor to AFCEE/CL on utilization of small business prime contractors and distribution of task orders
- Participate in Industry Days and Contractors School
  - ✓ Brief small business program in general
  - ✓ Brief subcontracting expectations

Role of the Small Business Office (cont'd)

- Evaluate Subcontracting Plans
  - ✓ Done at basic contract level through source selections
- Coordinate on DD 2579s
- Manage Outreach Program
- Industry Sounding Board
- Track Small Business Goal Progress
  - ✓ Advise director & customers quarterly
- Maintain Education Program
  - ✓ Awareness & training sessions
  - ✓ Advise & assist acquisition teams on SB matters

Teaming

- FAR 9.601 contractor team arrangement
  - ✓ (1) Two or more companies form a partnership or joint venture to act as a potential prime; or
  - ✓ (2) Potential prime agrees with one or more other companies to have them act as its subcontractors under a specified government contract or acquisition program

- FAR 9.603 “The Government will recognize the integrity and validity of contractor team arrangements; *provided,* the arrangements are identified and company relationships are fully disclosed in an offer…”

Types of Teams

- Joint Ventures
  - ✓ Formal (FAR 9.601 (1) on previous slide)
  - ✓ Informal (FAR 9.601 (2) on previous slide)

- Prime/Subcontractor
  - ✓ Prime is responsible for contract performance
  - ✓ Privity of contract between Government and Prime
  - ✓ Mentors and Protégés not automatically considered a team
  - ✓ Could be an informal joint venture but unless identified as such in the proposal it is not automatic assumption by the government

Selecting Teaming Partners

- Compatible contractors
- Assess team chemistry
  - ✓ Management styles, corporate cultures, strategic visions
- Assess team member capabilities
  - ✓ Business, financial, other resources
- Assess team member past performance
- Assess legal constraints
  - ✓ OCI issues, debarments/suspensions, qualification requirements
- All must understand terms & conditions of agreement

Joint Ventures (JVs)

- **FAR 19.101** defines a JV as an association of persons or concerns…concerting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. Joint venture is viewed as a business entity in determining power to control its management
- **13 CFR 121.103(h)** defines a JV as an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally

Formal Joint Ventures

- Contract in JVs name
- Contract performance responsibility lies with JV
- 13 CFR 124.513(c) contents of formal JV agreement
  - ✓ Required for 8(a) set-aside contracts
  - ✓ Highly recommended for any other set-aside contract
- In order to receive exclusion from affiliation on any non-8(a) contract, JV agreement between mentor and protégé must comply with 8(a) JV agreements (other than SBA approval of JV agreement)
- Prior to forming a JV check with your legal advisors as no government presentation covers all of the in's and out's of formal JVs

Formal Joint Ventures (cont'd)

- 8(a) program had comprehensive changes which were effective March 2011 and affect all areas of program
  - ✓ Intent was to tighten requirements so non-disadvantaged firms do not unduly benefit from 8(a) program
- Significant changes on performance for 8(a) JVs
- **Specific to 8(a) program**
  - ✓ Replaces "significant portion" language
  - ✓ Unpopulated JV – 8(a) employee must be program manager and amount of work by all is aggregated and 8(a) must perform at least 40% of all work done by JV
  - ✓ Populated JV – JV must demonstrate how performance of contract is controlled by 8(a) and non-8(a) partner, or any of its affiliates, may not act as subcontractor of the JV
  - ✓ Performance of work reports submitted to SBA

Informal Joint Ventures

- Prime-sub relationship with informal JV agreement
  - ✓ 13 CFR 121.103(h) – JV may or may not be in the form of a separate legal entity
- Contract in prime's name & performance responsibility is with prime
  - ✓ 13 CFR 125.6(i) – when an offeror is **exempt from affiliation** under 13 CFR 121.103(h) and qualifies as a small business, the performance of work requirements apply to cooperative effort of the joint venture
  - ✓ SBA allows 1st tier small business subcontractors to help prime meet the requirements of FAR 52.219-14 as long as informal JV agreement was submitted with proposal
- 13 CFR 124.513(c) contents of formal JV agreement
  - ✓ Highly recommended to be used for informal JV too

Affiliation

- FAR 19.101 defines affiliation as business concerns if, directly or indirectly, either one controls of has the power to control the other, or another concern controls or has the power to control both
- 13 CFR 121.103 goes a step further and states it does not matter whether the control is exercised or not
- Affiliation deals with business relationships between a SB and other firms
  - ✓ Prime-sub relationship that is not at arms length
  - ✓ Formal Joint Venture
  - ✓ Business relationship outside particular

Affiliation Rules

- Normal Rule - Affiliated business concerns' receipts or number of employees are added together to determine eligibility under size standards

- SBA excludes JVs/teaming arrangements under certain circumstances
  - ✓ Next series of slides will cover all possible scenarios

- PCM-13 size standard is revenue based
  - ✓ Note 1 applies on next series of slides - For procurements with revenue based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract.

Affiliation Rules (cont'd)

- Note 1
  - ✓ For procurements with employee based size standard, the procurement exceeds $10M.
  - ✓ For procurements with revenue based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract.
- Note 2
  - ✓ For procurements with employee based size standard, the procurement is less than $10M.
  - ✓ For procurements with revenue based size standard, the procurement is less than half the size standard corresponding to the NAICS code assigned to the contract.

The only time a firm needs to be concerned with affiliation is when the firm needs to be a small business in order to be awarded a contract. In a full and open scenario, it does not matter if the firms are affiliated because the JV

If firm is an 8(a) and the RFP is…

- …8(a) sole source (any $ value) and you want to JV with any other small business (at least one firm must be 8(a))
  - ✓ SBA must approve the JV agreement prior to award of contract
  - ✓ Firms are considered affiliated
  - ✓ Firms combined must meet size standard
  - ✓ 13 CFR 124.513(b)(2)
- …8(a) competitive (Note 1 applies) and you want to JV with any other small business (at least one firm must be an 8(a))
  - ✓ SBA must approve the JV agreement prior to award of contract
  - ✓ Firms are not considered affiliated
  - ✓ Each firm individually must meet size standard
  - ✓ 13 CFR 124.513(b)(1)
- …8(a) competitive (Note 2 applies) and you want to JV with any other small business (at least one firm must be 8(a))
  - ✓ SBA must approve the JV agreement prior to award of contract
  - ✓ Firms are considered affiliated
  - ✓ Firms combined must meet size standard
  - ✓ 13 CFR 124.513(b)(2)

If firm is an 8(a) and the RFP is…

- …8(a) sole source or competitive (any $ value) and you want to JV with large business who is your SBA Mentor in an approved SBA Mentor-Protégé Agreement
  - ✓ SBA must approve the JV agreement prior to award of contract
  - ✓ Firms are not considered affiliated and JV is considered to be 8(a)
  - ✓ SBA Mentor-Protégé Agreement must in place and approved by SBA
  - ✓ 13 CFR 124.513(b)(3)
- …Small Business Set-Aside (Note 1 applies) and you want to JV with any other small business
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are not considered affiliated
  - ✓ Each firm individually must meet size standard
  - ✓ 13 CFR 124.513(b)(1)
- … Small Business Set-Aside (Note 2 applies) and you want to JV with any other small business
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are considered affiliated
  - ✓ Firms combined must meet size standard

If firm is an 8(a) and the RFP is…

- …any level of competition (any $ value) and you want to JV with a large business who is NOT your SBA Mentor in an approved SBA Mentor-Protégé Agreement
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are considered affiliated and JV is considered to be a large business
  - ✓ 13 CFR 124.513(b)(2)

If firm is HUBZone Small Business & the RFP is…

- …HZ set-aside (Note 1 applies) and you want to JV with any other HZ small business
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are not considered affiliated
  - ✓ Each firm individually must meet size standard
  - ✓ 13 CFR 126.616(b)(1)
- …HZ set-aside (Note 2 applies) and you want to JV with any other HZ small business
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are considered affiliated
  - ✓ Firms combined must meet size standard
  - ✓ 13 CFR 126.616(b)(2)
- …HZ set-aside and you want to JV with any firm other than a HZ small business
  - ✓ Not an option
  - ✓ HZ small business can only JV with another HZ small business
  - ✓ 13 CFR 126.616(a)

If firm is SDVOSB and the RFP is…

- …SDVOSB competitive set-aside (Note 1 applies) and you want to JV with any other small business (at least one firm must be SDVOSB)
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are not considered affiliated
  - ✓ Each firm individually must meet size standard
  - ✓ 13 CFR 125.15(b)(1)(i)
- …SDVOSB competitive set-aside (Note 2 applies) and you want to JV with any other small business (at least one firm must be SDVOSB)
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are considered affiliated
  - ✓ Firms combined must meet size standard
  - ✓ 13 CFR 125.15(b)(1)(ii)
- …SDVOSB sole source set-aside (any $ value) and you want to JV with any other small business (at least one firm must be SDVOSB)
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are considered affiliated
  - ✓ Firms combined must meet size standard

If firm is SDVOSB and the RFP is…

- …any level of competition (any $ value) and you want to JV with a large business (at least one firm must be SDVOSB)
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are considered affiliated and JV is considered to be a large business
  - ✓ 13 CFR 125.15(b)(1)(ii)

If firm is SB and the RFP is…

- …small business set-aside (Note 1 applies) and you want to JV with any other small business
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are not considered affiliated
  - ✓ Each firm individually must meet size standard
  - ✓ FAR 19.101(7)(i)
- …small business set-aside (Note 2 applies) and you want to JV with any other small business
  - ✓ SBA may inspect records at will but does not approve JV agreement
  - ✓ Firms are considered affiliated
  - ✓ Firms combined must meet size standard
  - ✓ FAR 19.101
- …small business set-aside (any $ value) and you want to JV with large business
  - ✓ Not an option
  - ✓ Firms are considered affiliated and JV would be considered large business and could not compete on small business set-aside

Limitations on Subcontracting

- Percentages outlined in FAR 52.219-14
  - ✓ Varies for Services, Supplies, General Construction, and Special Trades
  - ✓ If Offeror is exempt from affiliation and qualifies as a SB, performance of work requirements apply to the cooperative effort of the team or JV (whether formal or informal)
- PCM13 = at least 50% of the cost of the contract performance incurred for personnel shall be expended for employees of the small business
- Applicable only if a prime must be small to be eligible for award
  - ✓ Full and open contracts awards, regardless of size of business, should not have FAR 52.219-14 in the contract

Meeting FAR 52.219-14

- 13 CFR 125.6(i) allows the cooperative efforts of JVs (formal or informal) in meeting FAR 52.219-14
- For many years we allowed for presumption of informal JVs between the small business prime and its small business 1st tier subcontractors
- **SBA ruling states informal JV is not presumed and must be evidenced by a teaming agreement between the business concerns explaining the relationship is an informal JV and meets the CFR definition of JV**
- At a minimum, teaming agreement shall include
  - ✓ Official names of parties to the JV & their respective signatures
  - ✓ Statement as to whether the JV is formal or informal
  - ✓ Purpose of the agreement
  - ✓ Effective dates/performance period for the agreement

PCM13 Subcontracting Goals

- Small Business 40%
- Small Disadvantaged Business 5%
- Woman Owned Small Business 5%
- HUBzone Small Business 3%
- Veteran Owned Small Business 3%
- Service Disabled Veteran Owned Small Business 3%

  - ✓ Does not apply to work performed in foreign countries
  - ✓ Minimum, Government specified goals
  - ✓ Goals expressed as % of anticipated subcontracting dollars

Best Practices at 772 ESS & AFCEE

- Almost all source selections are 100% Small Business Set-aside or have partial set-asides
- Small Business Participation subfactor weighted with equal importance as other three technical subfactors in all RFPs when using other than LPTA approach
- Small Business Subcontracting Plan has been added as a task order evaluation criteria
- Subcontracting goals are based on total obligated dollars rather than anticipated subcontracted dollars, where appropriate
- ESG/SB SA OL monitors eSRS data and reports to AFCEE/CL and cognizant Contracting Officers
- Post award concerns are treated as importantly as pre-award planning

Best Practices at 772 ESS & AFCEE (cont'd)

- Post award concerns are treated as importantly as pre-award planning
- Language has been added to basic contracts to allow small business set-asides at task order level
- All RFIs are reviewed by ESG/SB SA OL prior to public release
- ESG/SB SA OL is standing member of AFCEE Process Improvement Team
- ESG/SB SA OL attends and participates in AFCEE staff and corporate board meetings
- Contracting interns have four month rotation through small business office as part of training

SB counterparts in SA

- Lackland AFB
  - ✓ redacted
- Fort Sam Houston
  - ✓ redacted
- Kelly AIA
  - ✓ redacted
- Randolph AFB
  - ✓ redacted
  - ✓ redacted

Thank you for your attention

Questions?